

**IN THE UNITED STATES DISTRICT COURT FOR  
THE WESTERN DISTRICT OF OKLAHOMA**

<b>GARY SHAWN NICHOLSON,</b>	)	
	)	
<b>Petitioner,</b>	)	
	)	
<b>v.</b>	)	<b>Case No. CIV-11-1286-R</b>
	)	
<b>JAMES RUDEK, WARDEN,</b>	)	
	)	
<b>Respondent.</b>	)	

**MOTION TO DISMISS PETITION FOR HABEAS CORPUS**  
**AS PETITIONER IS NOT IN CUSTODY AND/OR THE PETITION IS TIME**  
**BARRED BY THE STATUTE OF LIMITATIONS**

Comes now the Respondent, by and through the Attorney General of the State of Oklahoma and respectfully asks that the instant Petition for Habeas Corpus be dismissed as the Petitioner is not in custody and/or it is untimely filed pursuant to 28 U.S.C. §2244(d). Respondent has filed a brief in support of this Motion which is being filed simultaneously herewith which more fully explains and supports Respondent's position.

Wherefore, for the reasons contained within Respondent's brief in support, Respondent respectfully requests that this Court dismiss the instant Petition as Petitioner is not in custody and/or it is barred by the statute of limitations.

Respectfully submitted,

**E. SCOTT PRUITT**  
**ATTORNEY GENERAL OF OKLAHOMA**

**S/DIANE L. SLAYTON**  
**DIANE L. SLAYTON, OBA #11829**  
**ASSISTANT ATTORNEY GENERAL**  
313 N.E. 21<sup>st</sup> St.  
Oklahoma City, OK 73105  
(405) 521-3921 Fax 522-4534  
Service e-mail: fhc.docket@oag.state.ok.us

**ATTORNEYS FOR RESPONDENT**

**CERTIFICATE OF MAILING**

**X** I hereby certify that on December 14, 2011, I electronically transmitted the attached document to the Clerk of Court using the ECF System for filing.

**X** I hereby certify that on December 14, 2011, I served the attached document by mail on the following, who is not a registered participant of the ECF System.

Gary Shawn Nicholson, #186120  
OSR  
PO Box 514  
Granite, OK 73547

**s/ DIANE L. SLAYTON**  
**DIANE L. SLAYTON**